

### REMARKS/ARGUMENTS

Favorable reconsideration of this application in view of the above amendments and in light of the following discussion is respectfully requested.

Claims 1-25, 30, 32-56, and 71-83 are pending, with Claims 2, 3, 14-16, 21, 23-25, 46-48, 53, 55, 56 and 72 being withdrawn from consideration. Claims 1, 4, 30, 33, and 71 are amended, and Claims 26-29, 31 and 57-70 are canceled without prejudice or disclaimer. No new matter is introduced.

The outstanding Office Action objected to Claim 33 for an informality. Claims 71, 73-79, 82, and 83 were rejected under 35 U.S.C. § 112, second paragraph as indefinite. In addition, Claims 1, 13, 17-20, 22, and 80 were rejected under 35 U.S.C. § 102(b) as anticipated by Zhang (U.S. Patent No. 6,343,717); Claims 4-6 were rejected under 35 U.S.C. § 103(a) as unpatentable over Zhang in view of Lewis (U.S. Patent No. 5,947,986); Claims 7 and 8 were rejected under 35 U.S.C. § 103(a) as unpatentable over Zhang in view of Zygmunt (U.S. Patent No 6,488,646); Claims 9 and 10 were rejected under 35 U.S.C. § 103(a) as unpatentable over Zhang in view of Barabino (U.S. Patent No. 4,740,194); Claims 11 and 12 were rejected under 35 U.S.C. § 103(a) as unpatentable over Zhang in view of Tobin (U.S. Patent No 3,792,699). Claims 30-32, 35-38, 45, 49-52, 54, 71, 73, 74, 76 and 81-83 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Zhang in view of Schindler (U.S. Patent No. 6,358,23131); Claims 39, 40 and 77 were rejected under 35 U.S.C. § 103(a) as unpatentable over Zhang in view of Schindler and Zygmunt; Claims 41 and 42 were rejected under 35 U.S.C. § 103(a) as unpatentable over Zhang in view of Schindler and Barabino; Claims 43 and 44 were rejected under 35 U.S.C. § 103(a) as

unpatentable over Zhang in view of Schindler and further in view of Tobin; Claims 31-35 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Barr (U.S. Patent No. 6,812,254); Claim 75 was rejected under 35 U.S.C. § 103(a) as unpatentable over Zhang in view of Schindler, Lewis, Ohsumi (US Patent No. 5,658,981); and Claims 78 and 79 are rejected under 35 U.S.C. §103(a) as unpatentable over Zhang in view of Schindler and Lewis.

Claims 26-29 and 57-70, directed to non-elected inventions, are canceled. Applicant reserves the right to present claims directed to the non-elected inventions in a divisional application, which shall be subject to the third sentence of 35 U.S.C. § 121.<sup>1</sup>

In response to the objection to Claim 33, Claim 33 is amended to recite “greater than 50% and mustard seed oil.” Amended Claim 33 is believed to be clear and free of informalities and it is respectfully requested that the objection to Claim 33 be withdrawn.

The outstanding Office Action rejected Claims 71, 73-79, 82, and 83 as indefinite, noting that “said volume” in line 6 of Claim 71 lacked antecedent basis. In response, amended Claim 71 recites a substance contained in an inside space of the tube in the first position. In view of this amendment, all of the claims are believed to be definite and clear. Accordingly, it is respectfully requested that the rejection of 71, 73-79, 82, and 83 under 35 U.S.C. § 112, second paragraph be withdrawn.

Applicants acknowledges with appreciation the courtesy of Examiner Foreman to interview this case with Applicants’ representatives on October 1, 2007, during which time the issues in the outstanding Office Action were discussed as substantially summarized

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<sup>1</sup> “A patent issuing on an application with respect to which a requirement for restriction under this section has been made ... shall not be used as a reference ... against a divisional application.” See also MPEP § 804.01.

hereinafter and also on the Interview Summary. Specifically, the features of the independent claims were discussed, but no agreement was reached.

Following from the personal interview, Claims 1, 4, 30, and 71 are amended, as discussed next.

The rejection of Claims 1, 13, 17-20, 22, and 80 under 35 U.S.C. § 102(b) as anticipated by Zhang is traversed.

Claim 1 relates to an evaluation or diagnostic kit. Amended Claim 1 recites that the evaluation or diagnostic kit includes a plurality of applicators containing different test substances *and a housing in which the applicators are housed*.

Turning to the applied reference, Zhang individual pipettes 40, as can be seen in Figure 11 of Zhang. Zhang describes that the pipette body 40 is pre-filled with the liquid 48, which consists of a pharmaceutical or cosmetic substance.<sup>2</sup> The liquid 48 may be comprised of an aqueous solution, a true solution, oil, solvent, emulsion, cream, ointment, lotion, suspension, paste, jelly, syrup, balm or any other similar substance that may be transported and/or stored in a container.<sup>3</sup> However, Zhang fails to disclose or suggest a kit that includes: (1) a plurality of applicators containing *different* test substances and (2) *a housing in which the applicators are housed*. Instead, Zhang merely describes that individual pipettes 40 can be individually filled.

Accordingly, as Zhang does not disclose or suggest the features of amended independent Claim 1, it is submitted that amended independent Claim 1 and the claims depending therefrom are in condition for allowance.

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<sup>2</sup> See Zhang, at col. 5, lines 19-20.

<sup>3</sup> See Zhang, at col. 5, lines 20-25.

With respect to the rejection of dependent Claims 4-6 as obvious over Zhang in view of Lewis, Lewis fails to cure the deficiencies in Zhang discussed above with respect to amended Claim 1. Accordingly, it is submitted that dependent Claims 4-6 are in condition for allowance for at least the same reasons as amended Claim 1, from which they depend.

Claims 7 and 8 were rejected under 35 U.S.C. § 103(a) as unpatentable over Zhang in view of Zygmunt (U.S. Patent No 6,488,646)

With respect to the rejection of dependent Claims 7 and 8 as obvious over Zhang in view of Zygmunt, Zygmunt fails to cure the deficiencies in Zhang discussed above with respect to amended Claim 1. Accordingly, it is submitted that dependent Claims 7 and 8 are in condition for allowance for at least the same reasons as amended Claim 1, from which they depend.

With respect to the rejection of dependent Claims 9 and 10 as obvious over Zhang in view of Barabino, Barabino fails to cure the deficiencies in Zhang discussed above with respect to amended Claim 1. Accordingly, it is submitted that dependent Claims 9 and 10 are in condition for allowance for at least the same reasons as amended Claim 1, from which they depend.

Claims 11 and 12 were rejected under 35 U.S.C. § 103(a) as unpatentable over (U.S. Patent No 3,792,699)

With respect to the rejection of dependent Claims 11 and 12 as obvious over Zhang in view of Tobin, Tobin fails to cure the deficiencies in Zhang discussed above with respect to amended Claim 1. Accordingly, it is submitted that dependent Claims 11 and 12 are in

condition for allowance for at least the same reasons as amended Claim 1, from which they depend.

The rejection of Claims 30-32, 35-38, 45, 49-52, 54, 71, 73, 74, 76 and 81-83 under 35 U.S.C. § 103(a) as being unpatentable over Zhang in view of Schindler is traversed.

Claim 30 relates to an evaluation or diagnostic kit. The kit includes a plurality of applicators containing test substances with at least one compound at different concentrations. Amended Claim 30 incorporated the subject matter of Claim 31, and recites that the kit further includes at least two test substances with at least one compound at concentrations *varying by a factor of at least two* from one applicator to another.

As discussed above with reference to independent Claim 1, Zhang fails to describe a kit that includes a plurality of applicators, much less kit includes a plurality of applicators containing test substances with at least one compound at different concentrations. Figure 7 of Schindler illustrates a kit 60 that includes a tweezers 62, a compressed applicator 14 with a withdrawal tether 18 attached thereto, and a pair of fluid-injecting devices 64 having plugs 66 inserted into the distal ends thereof.<sup>4</sup> However, rather than the injecting devices including test substances with at least one compound at *different* concentrations, the injecting devices 64 include the *same compound* at the *same concentration*. Indeed, acknowledging that the additional injector simply provides more of the same substance, Schindler states that “[o]f course one device 64 will suffice if its reservoir has sufficient capacity to accommodate enough anesthetic solution for performing the anesthetizing procedure.”<sup>5</sup>

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<sup>4</sup> See Schindler at col. 7, lines 57-61.

<sup>5</sup> See Schindler, at col. 7, lines 65-67.

Accordingly, even the combined teachings of Zhang and Schindler fail to disclose or suggest the features of amended Claim 30. It is submitted that Claim 30, and the claims depending therefrom, are in condition for allowance.

Claim 71 relates to a system for evaluating a sensitivity. The system includes a packaging and a plurality of tubes provided in the packaging. Claim 71 recites that the tubes include different test substances or test substances with *at least one compound at different concentrations*. Amended Claim 71 further recites that the packaging includes a housing in which the tubes are housed. As discussed above with respect to independent Claim 30, Zhang does not describe the plurality of tubes, and Schindler describes a kit that includes multiple injecting devices 64 that include the *same compound at the same concentration*. Accordingly, even the combined teachings of Zhang and Schindler fail to disclose or suggest the features of amended Claim 71. It is submitted that Claim 71, and the claims depending therefrom, are in condition for allowance.

With respect to the rejection of dependent Claims 39, 40 and 77 as obvious over Zhang in view of Schindler and Zygmunt, Zygmunt fails to cure the deficiencies in the combination of Zhang and Schindler discussed above with respect to either of amended Claims 1 or 71. Accordingly, it is submitted that dependent Claims 39, 40 and 77 are in condition for allowance for at least the same reasons as amended Claims 30 and 71, from which they respectively depend.

With respect to the rejection of dependent Claims 41 and 42 as obvious over Zhang in view of Schindler and Barabino, Barabino fails to cure the deficiencies in the combination of Zhang and Schindler discussed above with respect to amended Claim 30. Accordingly, it is

submitted that dependent Claims 41 and 42 are in condition for allowance for at least the same reasons as amended Claim 30, from which they depend.

With respect to the rejection of dependent Claims 43 and 44 as obvious over Zhang in view of Schindler and Tobin, Tobin fails to cure the deficiencies in the combination of Zhang and Schindler discussed above with respect to amended Claim 30. Accordingly, it is submitted that dependent Claims 43 and 44 are in condition for allowance for at least the same reasons as amended Claim 30, from which they depend.

With respect to the rejection of dependent Claims 31-35 as obvious over Zhang and Schindler in view of Barr, Barr fails to cure the deficiencies in the combination of Zhang and Schindler discussed above with respect to amended Claim 30. Accordingly, it is submitted that dependent Claims 32-35 are in condition for allowance for at least the same reasons as amended Claim 30, from which they depend.

Claim 75 was rejected under 35 U.S.C. § 103(a) as unpatentable over Zhang in view of Schindler, Lewis, Ohsumi (US Patent No. 5,658,981);

With respect to the rejection of dependent Claim 75 as obvious over Zhang in view of Schindler, Lewis, Ohsumi, neither Lewis nor Ohsumi cures the deficiencies in the combination of Zhang and Schindler discussed above with respect to amended Claim 71. Accordingly, it is submitted that dependent Claim 75 is in condition for allowance for at least the same reasons as amended Claim 71, from which it depends.

With respect to the rejection of dependent Claims 78 and 79 as obvious over Zhang in view of Schindler and Lewis, Lewis fails to cure the deficiencies in combination of Zhang and Schindler discussed above with respect to amended Claim 71. Accordingly, it is

submitted that dependent Claims 78 and 79 are in condition for allowance for at least the same reasons as amended Claim 71, from which they depend.

With regard to withdrawn Claims 2, 3, 14-16, 21, 23-25, it is respectfully requested that these claims be rejoined and allowed in accordance with MPEP §821.04, as these claims depend from Claims 1, and therefore include the subject matter recited in Claim 1, which is believed to be allowable.

With regard to withdrawn Claims 46-48, 53, 55, and 56, it is respectfully requested that these claims be rejoined and allowed in accordance with MPEP §821.04, as these claims depend from Claim 30, and therefore include the subject matter recited in Claim 30, which is believed to be allowable.

With regard to withdrawn Claim 72, it is respectfully requested that this claim be rejoined and allowed in accordance with MPEP §821.04, as this claim depends from Claim 71, and therefore includes the subject matter recited in Claim 71, which is believed to be allowable.

For the reasons discussed above, no further issues are believed to be outstanding in the present application, and the present application is believed to be in condition for formal allowance. Therefore, a Notice of Allowance for Claims 1-25, 30, 32-56, and 71-83 is earnestly solicited.

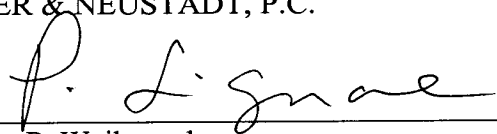


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Should the Examiner deem that any further action is necessary to place this application in even better form for allowance, the Examiner is encouraged to contact Applicants' undersigned representative at the below listed telephone number.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read "P. L. Signore", is written over a horizontal line.

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